

**Before the  
DEPARTMENT OF COMMERCE  
National Telecommunications and Information Administration  
and  
DEPARTMENT OF AGRICULTURE  
Rural Utilities Service**

In Re )  
 )  
American Recovery and )  
Reinvestment Act of 2009 )  
 )  
Broadband Initiatives )  
Joint Request for Information )

Docket No.  
090309298-9299-01

**COMMENTS OF THE RURAL CARRIERS**

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## SUMMARY

The Rural Carriers should be given a preference for ARRA grants and loans because they can leverage existing federal programs and their existing networks to quickly expand the availability of broadband services. Moreover, the Rural Carriers contend that NTIA and RUS must consider the impact on the Rural ILECs' provisioning of existing broadband services before providing a grant or loan to any applicant seeking to serve the Rural ILECs' areas.

Rural ILECs have existing investment, supported by existing federal programs, and a commitment to serve all consumers in their service territory. NTIA and RUS should consider: 1.) whether the applicant will serve all consumers in the rural ILEC's service territory and, if not, whether the grant or loan will adversely impact consumers that will not be served; and 2.) whether the ARRA grant and loan would promote artificial and non-sustainable competition.

These Comments also address the specific issues posed in the Joint Request for Information released by the two agencies.

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**COMMENTS OF THE RURAL CARRIERS**

The following comments are submitted on behalf of the 58 rural incumbent local exchange carriers (Rural ILECs) and the centralized equal access providers (CEA Providers) listed in Attachment A (hereinafter referred to jointly as the Rural Carriers), by their attorneys, and address the issues contained in the joint request for information (Joint Request) released by the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) in connection with the broadband initiatives in the American Recovery and Reinvestment Act of 2009 (ARRA). The Rural Carriers contend that they should be given a preference for ARRA grants and loans because they can leverage existing federal programs and their existing networks to quickly expand the availability of broadband services. Moreover, the Rural Carriers contend that NTIA and RUS must consider the impact on the Rural ILECs' provisioning of existing broadband services before providing a grant or loan to any applicant seeking to serve the Rural ILECs' areas.

The Rural ILECs have built and operate high-quality, advanced communications networks, including broadband networks, in some of the most rural areas of the country. They have a demonstrated record of providing high-quality service to their subscribers for over 50 years. They also have a demonstrated record during that time of upgrading their facilities to implement new technologies and provide new services.

Similarly, the CEA Providers have built and operate high-quality, advanced communications networks in Iowa and South Dakota that serve not only the rural ILECs in those states, but also competitive carriers. The CEA Providers also have a demonstrated record of providing high-quality service to their subscribers for many years and a demonstrated record of upgrading their facilities to implement new technologies and provide new services.

In short, the Rural Carriers have existing networks that can be improved to offer a higher level of broadband access in their service areas. In addition, the Rural Carriers have a proven track record of building, operating and maintaining high quality networks over the long term. Accordingly, the Rural Carriers are uniquely able to leverage broadband grants from NTIA and grants or loans from RUS to meet the goals of the ARRA.

As carriers of last resort, the Rural ILECs offer, and are required to offer, their services to all subscribers in their service area. All of the Rural ILECs offer DSL service to their subscribers. Many also are in the process of deploying fiber backbone, fiber to the curb or fiber to the home.

In addition, all of the Rural ILECs receive federal universal service support and many have received RUS loans, which have been critical to their ability to build and operate high-quality, advanced communications networks. Accordingly, by awarding ARRA grants or loans

to the Rural ILECs, NTIA and RUS would be able to leverage these existing federal programs to increase the availability of broadband networks and services in rural areas.

NTIA and RUS also must consider this before awarding grants or loans to entities other than the Rural ILECs who submit applications that include or overlap the Rural ILECs service territories. As stated, the Rural ILECs have existing investment, supported by existing federal programs, and a commitment to serve all consumers in their service territory. Awarding grants or loans that adversely impact the Rural ILECs' existing investment or the provision of service to all consumers in their service territories would be detrimental to the goals of the ARRA.

Disbursements under the ARRA should work in coordination with federal universal service and existing RUS loans and not be inconsistent with these programs. To this end, when considering applications that include or overlap areas served by the Rural ILECs, NTIA and RUS should consider: 1.) whether the applicant will serve all consumers in the rural ILEC's service territory and, if not, whether the grant or loan will adversely impact consumers that will not be served; and 2.) whether the ARRA grant and loan would promote artificial and non-sustainable competition.

NTIA and RUS should carefully consider the impact of awarding an ARRA grant or loan to any entity that serves less than the Rural ILEC's total service territory or subscriber base. As carriers of last resort, the Rural ILECs provide service on the same terms and conditions and at the same rate to all subscribers in their service territory, from the least costly to the most costly to serve. An entity that chooses to serve only a portion of the Rural ILECs' service territory or subscriber base and, thereby, gain a competitive advantage by controlling its costs and maximizing its revenues, should not be further advantaged through the award of an ARRA grant or loan. This would harm the ability of the Rural ILEC to maintain its existing level of high-

quality broadband service to all and, potentially, result in a decreased availability of broadband service to some subscribers. Clearly, funding an additional competitive provider of broadband service for some subscribers, while reducing the availability of broadband service to other subscribers, would be contrary to the goals of the ARRA. It also would frustrate the goals of the existing federal universal service programs.

The Rural ILECs currently receive competition from wireless carriers and, in some cases, competitive ILECs and cable companies. Most of these competitors do not serve the entire service area of the Rural ILECs or the entire subscriber base of the Rural ILECs. Further, it is not clear that there are enough subscribers or revenues in the Rural ILECs' service territories to sustain the current levels of competition, and in some cases it is clear that there are not enough revenues to sustain multiple competitors. When passing the Communications Act of 1996, Congress recognized that certain of the pro-competitive aspects of the Act may not be appropriate for rural areas and, as a result, imposed different requirements on rural carriers and for rural areas. For example, while state commissions are required to designate a qualified carrier as an eligible telecommunications carrier (ETC) in a non-rural area, the state is not required to do so in an area served by a rural telephone company. (47 USC § 214(e)). Similarly, Congress exempted rural telephone companies from the pro-competitive provisions of Section 251(c) of the Act until the State commission finds that their application is consistent with universal service, among other things. (47 USC § 251(f)). NTIA and RUS also should recognize the unique characteristics of rural areas and ensure that ARRA grants and loans are not used to promote additional, artificial and non-sustainable competition.

The Rural Carriers comment on the specific issues identified below. The issues have been numbered in accordance with the format used in the Joint Request.

## NTIA PROGRAM

**1. The Purposes of the Grant Program: Section 6001 of the Recovery Act establishes five purposes for the BTOP grant program. ...**

**1.a. Should a certain percentage of grant funds be apportioned to each category?**

No. Grants should be awarded to the overall best proposals. However, an emphasis should be placed on proposals that build or upgrade facilities in unserved or underserved areas, as these types of programs are more likely to have a long term effect.

**1.b. Should applicants be encouraged to address more than one purpose?**

Yes.

**1.c. How should the BTOP leverage or respond to the other broadband-related portions of the Recovery Act, including the USDA grants and loans program as well as the portions of the Recovery Act that address smart grids, health information technology, education, and transportation infrastructure?**

BTOP should leverage the federal universal service program and the existing RUS loan program by giving a preference to grant applicants that currently receive federal universal service support and RUS loans.

BTOP should leverage the other portions of the Recovery Act by requiring an applicant to explain how, if at all, its broadband proposal addresses the other programs. The extent to which an application addresses other programs could be a criteria used in considering whether the application should be awarded a grant.

In addition, BTOP can be leveraged by ensuring that an applicant does not receive funds under the ARRA from different entities for the same aspects of a project. Section 6001(e)(6) requires an applicant to indicate all other agencies or programs for which it has applied for a broadband grant or loan. The various agencies should coordinate to ensure that there is no overlap in the funding they provide for the same project.

**2.a. How should the grant program consider State priorities in awarding grants?**

**2.b. What is the appropriate role for States in selecting projects for funding?**

Section 6001(c)(2) of the Act states that NTIA may consult a State with respect to the identification of unserved or underserved areas located in the State and “the allocation of grant funds within that State for projects in or affecting the State.” NTIA can satisfy this requirement by allowing States to provide comment and/or make recommendations with

respect to which grant applications should be given priority or approved by the NTIA in its review process. In particular, for States that have completed broadband mapping projects, the maps can be used as the basis for designating unserved and underserved areas within the State.

**3. The Recovery Act requires NTIA to determine by rule whether it is in the public interest that entities other than those listed in Section 6001(e)(1)(A) [a State or political subdivision thereof, a territory or possession of the United States, an Indian tribe] (B) [non-profit entities] should be eligible for grant awards. What standards should NTIA apply in making this public interest determination?**

NTIA should find that it is in the public interest to award a grant to a for-profit entity based on the following standards:

1. The applicant has a proven history of building, operating and maintaining telecommunications networks;
2. The applicant has existing telecommunications facilities in or contiguous to the area for which a grant is requested;
3. The applicant is in good standing with state and federal authorities;
4. If applying for a grant for a project that includes or overlaps a rural ILEC's service territory, the applicant will provide service to all of the consumers in the rural ILEC's service territory and if not, funding will not reduce the availability of broadband service to any consumers; and
5. If applying for a grant for a project that includes or overlaps a rural ILEC's service territory, the applicant has demonstrated that the grant would not promote artificial and non-sustainable competition.

**4.a. What factors should NTIA consider in establishing selection criteria for grant awards?**

Section 6001(h) requires NTIA to consider the following selection criteria for grant awards: 1. award not less than one grant per State; 2. consider whether an application to deploy infrastructure in an area will increase affordability and subscribership, provide the greatest speed, enhance service for health care delivery, education, or children to the greatest population of users in the area, and not result in unjust enrichment as a result of support for non-recurring costs through another Federal program; and 3. consider whether the applicant is a socially and economically disadvantaged small business concern]

In addition, NTIA should consider the following factors in establishing selection criteria:

1. Does the applicant have a proven history of building, operating and maintaining telecommunications networks?
2. Does the applicant have existing telecommunications facilities in or contiguous to the area for which a grant is requested?
3. Is the applicant in good standing with state and federal authorities?
4. Is the applicant a rural ILEC that receives federal universal service funding?
5. Does the applicant have, or has it had in the past, a loan from RUS?
6. Does the applicant seek a grant to serve any part of a rural ILEC's service territory?
7. Will the application provide access or improved access to broadband service to consumers residing in an unserved or underserved area?
8. Can the applicant demonstrate the long term feasibility of the investment?
9. Does the applicant have a proven history of upgrading its facilities?
10. Does the applicant have a proven history of providing high-quality service?

**How should the long term feasibility of the investment be judged?**

Section 6001(e)(5) of the ARRA requires an applicant to demonstrate that it will unconditionally obligate funds required to meet its share of the project.

In addition, the applicant should demonstrate that it has an independent ability to pay for the long term continuation of the project, including the long term operation, maintenance and upgrading of any broadband facilities involved in the project. This should include a requirement that an applicant upgrade any facilities funded by BTOP grants when it upgrades the facilities in the largest metropolitan area, city or town that it serves. The Rural Carriers make this recommendation based on the experience of the Rural ILECs in purchasing facilities previously operated by the large and mid-sized ILECs. Specifically, over the last twenty years, a number of the Rural ILECs have purchased rural exchanges from large and mid-sized ILECs and found that the facilities serving those exchanges had not been upgraded for decades. In fact, some of the facilities dated back to the 1950's. NTIA can ensure that recipients of BTOP grants do not engage in similar behavior and ensure the long term feasibility of the investment by adopting the Rural Carriers' proposed requirement.

**4.c. How should the BTOP prioritize proposals that serve underserved or unserved areas?**

The BTOP should prioritize proposals that will provide access or improved access to broadband service to consumers residing in an unserved or underserved area over proposals that do not. However, NTIA should not adopt a preference for unserved areas over underserved areas. Rather, NTIA should adopt a total application approach when comparing proposals for unserved versus underserved areas. The Rural Carriers make this recommendation because, based on other factors such as speed and the ability to serve businesses, create jobs and provide emergency services, to name a few, a proposal to upgrade service in an underserved area may provide greater benefit than a proposal to provide service in an unserved area. In addition, a proposal to create or upgrade a broadband backbone network that benefits many rural ILECs and their customers, or even an entire state, should be prioritized, even if such a proposal would not serve only unserved areas.

**Should the BTOP consider USDA broadband grant awards and loans in establishing these priorities?**

Yes. Recipients of USDA broadband grants and loans that amount to less than 80% of the projects cost should be given a preference for BTOP grants for the non-covered portion of a project.

**4.h. What role, if any, should retail price play in the grant program?**

In the universal service provisions of the Communications Act of 1996, Congress adopted the principle that consumers in rural and high cost areas should have access to telecommunications and information services, including advanced services, at rates that are reasonably comparable to rates charged for similar services in urban areas. (47 USC §254(b)(3)). By making sure that BTOP grants work in concert with the existing federal universal service support program, NTIA can further ensure affordability.

**9.a. What factors should an applicant show to establish “financial need” necessary to receive more than 80 percent of a project’s cost in grant funds?**

All applicants should be required to demonstrate that they are financially viable and that they have an independent ability to pay for the long term continuation of the project, including the long term operation, maintenance and upgrading of any broadband facilities involved in the project, in order to qualify for a BTOP grant, even if the applicant seeks a grant for more than 80 percent of a project’s cost. Accordingly, grants for more than 80 percent of a project’s cost should be very rare.

**9.b. What factors should the NTIA apply in deciding that a particular proposal should receive less than an 80 percent Federal share?**

All applicants should be able to apply for an 80 percent share of funding. However, an applicant should be given a preference if its proposal includes a request for less than 80 percent funding. This would be an indication of the long term feasibility of the project, the applicant's independent ability to pay for the long term continuation of the project and the applicant's commitment to the project.

**9.c. What showing should be necessary to demonstrate that the proposal would not have been implemented without Federal assistance?**

The ARRA requires NTIA to seek assurances that projects supported by the program will be substantially completed within 2 years following an award. Further, the ARRA requires NTIA to ensure that all awards are made before the end of fiscal year 2010. Accordingly, applicants should demonstrate that the proposal would not have been implemented without an ARRA grant or loan before two years following an award or the end of fiscal year 2012, whichever is earlier. At a minimum, applicants should provide an affidavit, under penalty of perjury, to this effect.

**10.b. What elements should be included in the application to ensure the projects can be completed within two (2) years (e.g. timelines, milestones, letters of agreement with partners)?**

The ARRA requires NTIA to seek assurances that projects supported by the program will be substantially completed within 2 years following an award. Applications should include a reasonable and realistic timeline showing that a project can be substantially completed. For any equipment that must be purchased, the applicant should provide information showing that the equipment manufacturer or supplier will make equipment available for purchase within the timeline constraints. For any facilities that must be constructed, the applicant should provide information showing that a construction crew is available within the timeline constraints.

However, in determining whether a program will be substantially completed, NTIA must take into consideration, and should not penalize, applicants for circumstances beyond their control. For example, the ability to complete construction on a proposal to build facilities in a northern climate may be impacted by the short construction period due to winter weather. In addition, projects that require access to right of way on lands managed by the Bureau of Land Management (BLM) may be delayed due to the time it takes for the BLM process.

**13.a. For purposes of the BTOP, how should NTIA, in consultation with the FCC, define the terms "unserved area" and "underserved area"?**

The Rural Carriers agree with the recommendation of USTelecom that the definitions adopted for these terms should focus on the key broadband goal of the ARRA, namely "to create the opportunity for those who cannot fully participate in today's broadband world to do so through reliable broadband connections ...". US Telecom letter to David P. Grahn

dated March 16, 2009. Further, the Rural Carriers support a definition of unserved and underserved that includes a standard of comparability and affordability in urban and rural areas. Under such a definition, it is not necessary to define “underserved” and “unserved” in terms of any particular speed. Rather, under this approach, the current broadband speed available in an area would be only one factor in setting these definitions.

However, the definitions should be based on the availability of broadband facilities in an area. In this regard, the Rural Carriers urge NTIA to reject the idea expressed in the comments of NATOA that service that is not affordable is not accessible and, therefore, the area is underserved.

**13.b. How should the NTIA define “broadband service”?**

- (1) Should the BTOP establish threshold transmission speeds for purposes of analyzing whether an area is “unserved” or “underserved” and prioritizing grant awards? Should thresholds be rigid or flexible?**
- (2) Should the BTOP establish different threshold speeds for different technology platforms?**
- (3) What should any such threshold speed(s) be, and how should they be measured and evaluated (e.g., advertised speed, average speed, typical speed, maximum speed)?**

The Rural Carriers contend that it is not necessary to define “broadband service” in terms of any particular speed. Rather, speed should be one of the aspects considered in evaluating the total grant proposal.

**13.c. How should the BTOP define the nondiscrimination and network interconnection obligations that will be contractual conditions of the grants awarded?**

- (2) Should the network interconnection obligation be based on existing statutory schemes? If not, what should the interconnection obligation be?**
- (5) In the case of infrastructure paid for in whole or part by grant funds, should the obligations extend beyond the life of the grant and attach for the useable life of the infrastructure?**

Section 6001(j) of the ARRA states that NTIA shall publish “the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section, including, at a minimum, adherence to the principles contained in the Commission’s broadband policy statement (FCC 05-15, adopted August 5, 2005).”

In addition, rural broadband providers should have equitable, non-discriminatory access to the rates, terms, and conditions that large, vertically integrated providers offer their own affiliates and largest customers.

## RUS PROGRAM

**1. What are the most effective ways RUS could offer broadband funds to ensure that rural residents that lack access to broadband will receive it? ...RUS is looking for suggestions as to the best ways to**

**a. bundle loan and grant funding options to ensure such access is provided in the projects funded under the Recovery Act to areas that could not traditionally afford the investment;**

**c. ensure that Recovery Funding is targeted to unserved areas that stand to benefit the most from this funding opportunity?**

The ARRA states that the \$2,500,000,000 in broadband funds allocated to RUS “is available for grants, loans and loan guarantees.” There is no requirement that RUS allot any particular part of the total amount to any one of these mechanisms. Accordingly, each applicant should be able to request the type of funding that is most appropriate for its proposed project and for its company.

The Rural Carriers, however, recommend that RUS should make available zero interest loans for ARRA purposes. Zero interest loans and grants will make the provision of broadband services more achievable in high-cost, rural areas.

**2.a. RUS is charged with ensuring that 75 percent of the area is rural and without sufficient access needed for economic development. How should this definition be reconciled with the NTIA definitions of “unserved” and “underserved”?**

The phrase “without sufficient access needed for economic development” does not necessarily equate with NTIA’s definitions of “unserved” and “underserved.” However, the Rural Carriers have recommended that NTIA define unserved and underserved based on access comparable to that provided in urban and suburban areas. This standard also would, in part, provide guidance on access sufficient for economic development.

**3.a. How should the RUS define “rural economic development”? What factors should be considered, in terms of job growth, sustainability, and other economic and socio-economic benefits?**

**b. What speeds are needed to facilitate “economic development”? What does “high speed broadband service” mean?**

**c. What factors should be considered, when creating economic development incentives, in constructing facilities in areas outside the seventy-five percent area that is rural (i.e. within an area that is less than 25 percent rural)?**

Job growth and maintaining current jobs should be considered in defining “rural economic development.” The speeds necessary to facilitate “economic development” may vary depending on the area.

**4. In further evaluating projects, RUS must consider the priorities listed below. What value should be assigned to those factors in selecting applications? What additional priorities should be considered by RUS?**

**Priorities have been assigned to projects that will: (1) give end-users a choice of Internet service providers;**  
**(2) serve the highest proportion of rural residents that lack access to broadband service;**  
**(3) be projects of current and former RUS borrowers, and**  
**(4) be fully funded and ready to start once they receive funding under the Recovery Act?**

The Rural Carriers note that the priorities listed by RUS, in some cases, do not follow the language of the ARRA exactly. Further, RUS has not listed all of the priorities specified in the ARRA. However, based on the priorities listed by RUS, the Rural Carriers believe item 1) (giving end-users a choice of Internet service providers) should be given a lower priority. As previously stated, it is not clear that there are enough subscribers or revenues in the Rural ILECs’ service territories to sustain the current levels of competition. ARRA funding should not be used to promote additional, artificial and non-sustainable competition.

Respectfully submitted,

**The Rural Carriers**

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Rural Incumbent Local Exchange Carriers

Harrisonville Telephone Company  
Copper Valley Telephone Cooperative  
The Ponderosa Telephone Company  
CC Communications  
Cameron Telephone Company  
BEK Communications Cooperative  
Dumont Telephone Company  
Red River Rural Telephone Association  
Midvale Telephone Exchange, Inc.  
Lincoln County Telephone System  
The Chillicothe Telephone Company  
Fidelity Telephone Company  
South Slope Cooperative Telephone Company  
North East Louisiana Telephone Company, Inc.  
Public Service Telephone Company  
Hill Country Telephone Cooperative, Inc.  
Townes Telecommunications, Inc.  
Choctaw Telephone Company  
Electra Telephone Company  
Haxtun Telephone Company  
MoKan Dial, Inc.  
Tatum Telephone Company  
Northeast Florida Telephone Company, Inc.  
Walnut Hill Telephone Company, Inc.  
Alliance Communications Cooperative  
Armour Independent Telephone (A Golden West Company)  
Beresford Municipal Telephone Company  
Bridgewater Canistota Telephone (A Golden West Company)  
Brookings Municipal Utilities d/b/a Swiftel Communications  
Cheyenne River Sioux Tribal Telephone Authority  
Faith Municipal Telephone Company  
Fort Randall Telephone  
Golden West Telecommunications Cooperative  
Hills Telephone Company (An Alliance Company)  
Interstate Telecommunications Cooperative  
James Valley Telecommunications  
Kadoka Telephone Co. (A Golden West Company)  
Kennebec Telephone Company  
Knology (incumbent South Dakota LEC operations)  
Long Lines  
McCook Cooperative Telephone

Midstate Communications  
Mount Rushmore Telephone  
RC Communications (A Roberts County Telephone Company)  
Roberts County Telephone Cooperative  
Santel Communications Cooperative  
Sioux Valley Telephone (A Golden West Company)  
Splitrock Properties (An Alliance Company)  
Stockholm-Strandburg Telephone Co. (An Interstate Company)  
Tri-County Telcom, Inc. (A McCook Cooperative Company)  
Union Telephone (A Golden West Company)  
Valley Telecommunications Cooperative  
Venture Communications Cooperative  
Vivian Telephone Co. (A Golden West Company)  
West River Cooperative Telephone  
West River Telecommunications Cooperative  
Western Telephone Company (A Venture Communications Company)  
Dakota Central Telecommunications

Centralized Equal Access Providers

Iowa Network Services  
South Dakota Network, Inc.